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10 IN THE SUPREME COURT OF THE STATE OF ARIZONA

11 In the Matter of PETITION TO
12 AMEND RULE 6.8 OF THE
13 ARIZONA RULES OF CRIMINAL
14 PROCEDURE

Supreme Court No. R-05-0031
COMMENT OF STATE BAR

15 The State Bar of Arizona, through undersigned, files the following comment,
16 pursuant to Rule 28, Arizona Rules of the Supreme Court, to Petition R-05-0031,
17 concerning a proposed amendment to Rule 6.8, Ariz.R.Crim.P., relating to ABA
18 Guidelines for the Appointment and Performance of Defense Counsel in Death
19 Penalty Cases (Revised Edition February 2003).

20 At the May 19, 2006 meeting of the Board of Governors, members of the
21 Arizona criminal justice community were invited to speak to the petition and to the
22 recommendations of Bar sections and committees. Speakers included Larry
23 Hammond, Chair of the Indigent Defense Task Force; Robin Maher, ABA Death
24 Penalty Representation Project; Joe St. Louis, President, Arizona Attorneys for
25 Criminal Justice; James Beene, Office of the Maricopa County Attorney; and Kent
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1 Cattani, Office of the Attorney General. Those speaking to the Board of
2 Governors represented divergent opinions concerning the Petition. The Board
3 devoted substantial time for presentation by the speakers and discussion.
4 Previously, the Board's Rules Review Committee heard additional input from
5 Micah Schmit, Chair of the Criminal Practice and Procedure Committee, and Doug
6 Passon, Chair of the Criminal Justice Section.

7 After considerable debate, the Board voted 12-10, with one abstention, to
8 support the petition if modified to include provisions that 1) Rule 6.8, if adopted,
9 would incorporate the 2003 version of the ABA Guidelines and 2) require defense
10 counsel to swear/avow, at the outset of the representation, knowledge of and intent
11 to adhere to the guidelines in all but exceptional circumstances supported by
12 reasonable cause. Larry Hammond, the petitioner, has indicated that he and the
13 Indigent Defense Task Force support these modifications to the Petition.

14 For the above reasons, the State Bar respectfully requests that the Arizona
15 Supreme Court adopt Petition R05-0031 with the above referenced modifications.

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17 **RESPECTFULLY SUBMITTED** this 22nd day of May 2006.

18 **STATE BAR OF ARIZONA**

19
20  for Robert Van Wyck
21 Robert B. Van Wyck
22 Chief Bar Counsel
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1 Electronically filed with the Clerk
2 of the Supreme Court of Arizona
3 this 22nd day of May 2006.

4 By: Christine M Thompson

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6 Copy of the foregoing mailed
7 this 22nd day of May 2006, to:

8 Larry A. Hammond
9 Osborn & Maledon, PA
10 2929 North Central Avenue, Suite 2100
11 Phoenix, AZ 85012

12 Jim Belanger
13 40 North Central Avenue
14 Phoenix, AZ 85004-4429
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